

HONORABLE ROBERT J. BRYAN

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Plaintiff,

v.

NORTHWEST MOTORSPORT, INC.,

Defendant.

CIVIL ACTION NO. 3:12-cv-05728-RJB

CONSENT DECREE AND ORDER

DRAFT 08.01.13

I. INTRODUCTION

1. This action originated when Bayani Salcedo filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC" or "Commission"). Mr. Salcedo alleged that Defendant Northwest Motorsport Inc. ("Defendant" or "the Company") discriminated against him in violation of Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. § 2000e, *et seq.*, when Defendant subjected him to a hostile and abusive work environment based on his sex (Male), and/or National Origin (Filipino), resulting in conditions so intolerable that Mr. Salcedo was constructively discharged from his position.

2. On February 2, 2012, the EEOC issued a Letter of Determination with a finding of reasonable cause to believe that Defendant violated Title VII. Thereafter, EEOC attempted to conciliate the charge and conciliation was unsuccessful.

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EQUAL EMPLOYMENT  
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1       3.     The Commission filed its Complaint on August 16, 2012, in the United States  
2     District Court for the Western District of Washington. The Complaint alleges that Defendant  
3     subjected Mr. Salcedo to a hostile and abusive working environment, and then constructively  
4     discharged him based on his sex (Male) and/or National Origin (Filipino).

5       4.     The parties want to conclude fully and finally all claims arising out of the EEOC's  
6     Complaint and Mr. Salcedo's charge of discrimination filed with EEOC. The EEOC and  
7     Defendant enter into this Consent Decree to further the objectives of equal employment  
8     opportunity as set forth in Title VII.

9

10                  II. SETTLEMENT SCOPE

11       5.     This Consent Decree is the final and complete resolution of all allegations of  
12     unlawful employment practices contained in Mr. Salcedo's discrimination charge, in the EEOC's  
13     administrative determination, and in the Complaint filed herein, including all claims by the  
14     EEOC and Defendant for attorney fees and costs.

15

16                  III. MONETARY RELIEF

17       6.     In settlement of this lawsuit, Defendant agrees to pay Mr. Salcedo the total  
18     amount of \$80,000 within ten (10) days of the date of entry of this Consent Decree by delivering  
19     the following to an address of Mr. Salcedo's that has been provided by certified mail -return  
20     receipt:

21                  a.     A check in the amount of thirty-thousand dollars (\$30,000) as lost wages payable  
22     to Mr. Salcedo. The check shall be reduced by any applicable deductions for the employee's  
23     portion of FICA and by applicable federal and state income tax withholdings related to the  
24     payment of employees' wages. Defendant shall include a statement of payments and deductions;  
25     and

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1           b.       A separate check in the amount of fifty-thousand dollars (\$50,000) as  
2 compensatory damages payable to Mr. Salcedo. Defendant will issue Mr. Salcedo an IRS Form  
3 1099 for the payment described in this subparagraph (b).

4           c.       Defendant will not condition the receipt of monetary relief on Mr. Salcedo's  
5 agreement to: (a) maintain as confidential the facts and/or allegations underlying his charge and  
6 complaint and the terms of this Decree; (b) waive his statutory right to file a future charge with  
7 any government agency; (c) agree to a non-disparagement and/or confidentiality agreement; or  
8 (d) release any claims beyond the Title VII claims at issue in this action and which this Consent  
9 Decree resolves.

10

11                  IV. INJUNCTIVE AND OTHER RELIEF

12           A.       General Provisions

13           7.       Defendant, its officers, agents, General Manager, managers, assistant managers  
14 and other supervisors and all human resource professionals who provide advice and assistance to  
15 the foregoing individuals are enjoined from engaging in practices which constitute harassment  
16 based on any employee's sex and/or National Origin, and/or which constitute retaliation against  
17 any employee for engaging in protected activity. In recognition of its obligations under Title  
18 VII, Defendant shall institute the policies and practices set forth below at all of its facilities in the  
19 state of Washington.

20           B.       Anti-Discrimination Policies and Procedures

21           8.       Defendant shall carry out anti-discrimination policies, procedures and training for  
22 all management personnel, supervisors and employees.

23           9.       For the duration of this consent decree, Defendant will implement a written equal  
24 employment opportunity policy, which sets forth the requirements of federal laws against  
25 employment discrimination and specifically those provisions which make harassment unlawful

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1 and which make it unlawful to retaliate against any current or former employee for opposing any  
2 practice made unlawful by Title VII. Not later than one-hundred-and-twenty (120) days after  
3 entry of this Consent Decree, Defendant will confirm that it has distributed a written copy of its  
4 EEO policies to its managers, supervisors and employees.

5

6 C. Equal Employment Opportunity Training

7 10. Defendant shall provide an annual, four-hour EEO training seminar by an  
8 independent EEO consultant approved by the EEOC to the owner, all of its managers,  
9 supervisors, Human Resources staff, and all employees during the pendency of this Consent  
10 Decree. This anti-discrimination training shall include, at a minimum, a discussion of federal  
11 law prohibiting harassment and retaliation, and a review of Defendant's EEO policies and  
12 updates or revisions thereto. The training shall be aimed at helping attendees understand how to  
13 define and identify harassment, employment discrimination and retaliation, identify acceptable  
14 avenues of complaint, and the steps Defendant will take to investigate any internal harassment  
15 complaint. Training materials must be submitted to the EEOC at least thirty (30) days prior to  
16 the training session.

17 11. For the duration of this Consent Decree, Defendant shall notify the EEOC in  
18 writing of the completion of the training seminars and shall specify the names and job titles of  
19 the managers, supervisors and employees who participated in and completed the training. This  
20 information shall be provided as part of the annual report Defendant submits to the EEOC.

21

22 D. Non-Disclosure of Information

23 12. In response to inquiries about Mr. Salcedo's employment, Defendant will provide  
24 only dates of employment and positions held.

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1 F. Policies Designed to Promote Accountability

2 13. Defendant agrees that it shall impose discipline, up to and including termination  
3 of employment, upon the General Manager, or any other supervisor or manager who harasses an  
4 employee based on his/her sex and/or National Origin, or who retaliates against any person who  
5 complains about or participates in any investigation or proceeding concerning any allegation of  
6 discrimination. Defendant shall communicate this policy to the General Manager, all other  
7 managers and supervisors within ten (10) days of the entry of the Consent Decree.

8 14. Defendant agrees that it shall advise the General Manager, its managers and  
9 supervisors in writing within ten (10) days of the entry of the Consent Decree of their duty to  
10 ensure compliance with anti-discrimination laws and the Company's EEO policy. In conducting  
11 performance reviews, the Company shall hold the General Manager, managers and supervisors  
12 accountable for EEO enforcement and compliance.

13  
14 G. Reporting

15 15. Defendant shall provide proof to the EEOC of delivery of the settlement checks  
16 identified in paragraph 6 (a) and (b) above. In addition, Defendant shall report to the EEOC for a  
17 period of two (2) years. The reports shall be in writing and submitted on an annual basis during  
18 the three-two reporting period. The reporting period will run from the date of the entry of this  
19 Consent Decree.

20 16. These annual reports shall contain the following information and attachments:

21 a. Certification that Defendant has:

- 22 1. Continued to maintain its written EEO policies and procedures and  
annually distributed copies of its EEO policy as described in Paragraph 9;
- 23 2. Complied with the training provisions enumerated in this Consent Decree,  
as provided in Paragraphs 10-11;

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1           3. Continued to promote policies and procedures to promote EEO  
2           accountability by managers and supervisors, as required by Paragraph 13-  
3           14.

4           4. Complied with all other provisions of this Consent Decree.

5           b. Copies of the following documents shall be included with each annual report  
6           submitted to the Seattle Filed Office of the EEOC:

7           1. A copy of the Company's EEO policy and procedures developed and  
8           implemented in accordance with the provisions of this Consent Decree;

9           2. A summary of formal or informal discrimination complaints that allege  
10          harassment or retaliation, if any, filed by any employee, and the resolution  
11          of each such complaint;

12          3. A sign-in sheet or list of the Defendant names and job titles of the  
13          managers and supervisors who completed EEO training and the dates the  
14          training was conducted during the previous reporting period.

15          17. If applicable, Defendant shall submit a statement with its report to the EEOC  
16          specifying the areas of noncompliance, the reason for the noncompliance, and the steps that were  
17          or shall be taken to bring the Company into compliance.

18          H. Posting

19          18. Defendant shall post a Notice to All Employees. This Notice is attached as  
20          Exhibit 1 to this Consent Decree. The Notice shall be posted on a centrally located bulletin  
21          board at each of Defendant's facilities in Washington and any facilities in the state of  
22          Washington for the duration of the Consent Decree.

23                 V. SUCCESSOR LIABILITY

24          19. Defendant shall notify the EEOC at least thirty (30) days prior to the purchase of  
25          any ownership interest in Defendant by an individual and/or entity (including the name of the  
26          individual and/or entity, a contact person, mailing address and telephone number). Defendant  
27          shall provide prior written notice to any potential purchaser of Defendant's business, or a  
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1 purchaser of all or a portion of Defendant's assets, and to any other potential successor, of the  
2 Commission's lawsuit, the allegations raised in the Commission's complaint, and the existence  
3 and contents of this Consent Decree. Defendant agrees that the terms of this Consent Decree are  
4 binding on that individual, entity and/or successor after it acquires an ownership interest in  
5 Defendant.

6

7 VI. ENFORCEMENT

8 20. If the EEOC determines that Defendant has not complied with the terms of this  
9 Consent Decree, the EEOC shall provide written notification of the alleged breach to Defendant.  
10 The EEOC shall not petition the Court for enforcement of this Consent Decree for at least twenty  
11 (20) days after providing written notification of the alleged breach. The 20-day period following  
12 the written notice shall be used by the EEOC and Defendant for good faith efforts to resolve the  
13 dispute.

14 VII. RETENTION OF JURISDICTION

15 21. The United States District Court for the Western District of Washington at  
16 Tacoma shall retain jurisdiction over this matter for the duration of this Consent Decree.

17

18 VIII. DURATION AND TERMINATION

19 22. This Consent Decree shall be in effect for two (2) years from the date of entry of  
20 the Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court  
21 finds Defendant to be in violation of the terms of the Consent Decree, the Court may extend the  
22 duration of this Consent Decree.

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Respectfully submitted this 6<sup>th</sup> day of August, 2013.

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6  
7 Attorneys for Defendant  
8  
9

10 **ORDER APPROVING CONSENT DECREE**

11 The Court, having considered the foregoing stipulated agreement of the parties,  
12 HEREBY ORDERS THAT the Consent Decree be, and the same hereby is, approved as the final  
13 decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with  
14 prejudice and without costs or attorneys' fees. The Court retains jurisdiction of this matter for  
15 purposes of enforcing the Consent Decree approved herein.

16 DATED this 27<sup>th</sup> day of August, 2013.  
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21 ROBERT J. BRYAN  
United States District Judge  
22  
23  
24  
25

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## NOTICE TO EMPLOYEES

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This notice has been posted pursuant to an Order of the Court, entered on \_\_\_\_\_, 2013, approving the Consent Decree entered in resolution of a lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC) against Northwest Motorsport, Inc. in the United States District Court for the Western District of Washington. The Consent Decree resolves EEOC's claims of harassment brought against the company and enjoins them from certain conduct prohibited by law. (*EEOC v. Northwest Motorsport, Inc.*, 3:12-cv-05728-RJB (W.D. Wa.)).

Federal law and the Consent Decree prohibit discrimination against any individual because of his or her sex and/or National Origin, including harassment on these bases.

Federal law also prohibits retaliation against any individual by an employer because the individual complains of discrimination, cooperates with any company or Government Investigation of a charge of discrimination, participates as a witness or potential witness in any investigation or legal proceeding, or otherwise exercises his or her rights under the law.

Any employee who is found to have retaliated against any other employee because such employee participated in this lawsuit will be subject to substantial discipline up to and including immediate discharge.

Should you have any complaints of discrimination or harassment, you should contact \_\_\_\_\_ at \_\_\_\_\_.

Employees also have the right to bring complaints of discrimination or harassment to the U.S. Equal Employment Opportunity Commission, Seattle District Office at 909 1<sup>st</sup> Avenue, Suite 400, Seattle, WA 98104-1061, 206.220.6883, 1800.669.4000, or the Washington State Human Rights Commission at 711 S. Capitol Way, Suite 402, Olympia, WA 98504-2490, 360.753.6770.

**THIS NOTICE SHALL REMAIN PROMINENTLY POSTED AT ALL FACILITIES UNTIL  
\_\_\_\_\_ 2015. THIS OFFICIAL NOTICE SHALL NOT BE ALTERED, DEFACED, COVERED  
OR OBSTRUCTED BY ANY OTHER MATERIAL.**